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THE OHIO CONSTITUTION

A REPLY AND A REJOINDER

To the Editor of the North American Review :

SIR,—An article appearing in your November issue under the title "Socialism in the Ohio Constitution," by Daniel J. Ryan, appears to one acquainted with the facts to call for an answer. The writer of the above article has given the impression that the new constitution of Ohio was fathered by fanatics and obtained by fraud. Some facts pointing to the absurdity and falsity of his idea should be brought before your readers.

Long before discussion became timely advocates of amendments to our State constitution were found not only among so-called progressives or radicals, but among reactionaries. The Ohio State Board of Commerce, an avowedly conservative organization, through its Journal and through the public speeches of its president, Allen Ripley Foote, was crying as loudly as any for a convention to amend the constitution. To be sure, their particular hobby was taxation, and they were later found vigorously opposing the amendments finally submitted; but they as well as others demanded this convention. A perusal of the *Ohio State Journal of Commerce* for the year 1910 will furnish sufficient answer to Mr. Ryan's statement that the only ones who were asking for a constitutional convention were "labor leaders, Socialists, single-taxers, and other reformers."

The trouble with the writer seems to be that he doesn't like the amendments which the convention finally presented and which were adopted by the people; in this he does not stand alone. Any argument which he might make against the advisability or soundness of certain amendments which were adopted would be timely and acceptable. He confuses, however, the argument as to the general desirability of the amendments with the argument as to whether or not they were desired by the people of the State of Ohio. The two questions are entirely distinct. In arguing against the amendments he makes two statements which are part of an argument to the second point above mentioned—*i. e.*, as to whether these amendments were desired by the people of Ohio. The two statements are, in substance, that the delegates to the convention and the vote on the amendments submitted were misrepresentative of the electorate of Ohio!

"That the majority vote on the convention was an involuntary and enforced one is evidenced by the result of the election of the delegates to that body. At this election, held in 1911, less than twenty-five per cent. of the electors of the State participated; and not a single delegate received a vote of a majority of the electors of the county from which he was elected." "Any one securing the required number of names could become a candidate. This opened the door to all kinds of men; it practically closed it to those of great fitness and ability." "The result was a mediocre, unorganized, and chaotic mass."

As an answer to this I give briefly the history of the election of candidates to this convention from my own county (Hamilton). A temporary organization was effected for the sole purpose of electing representative men to the constitutional convention. It was made up of delegates from

almost every civic, social, and business organization in the city, and was known as the United Constitution Committee. This body, after a thorough discussion of what should go into a new constitution, pledged itself to four amendments only and named nine men as its ticket in Hamilton County. Of these, three were labor-union men, all able and highly respected. One of these men was elected to the State Legislature on November 5th, largely because of satisfaction with his record in the Constitutional Convention. One was a business man of standing—secretary of the Receivers' and Shippers' Association of Cincinnati. One was a young lawyer, an independent in city politics, of sterling character and marked ability—then and now president of the Federated Improvement Association, the central body of all the local civic leagues in the city. Another was a lawyer of prominence who was seriously talked of at that very time for Mayor of Cincinnati, and who has since been elected to Congress from the First District of Ohio. Another was one of the ablest business men in the city, a man of wealth and social standing, for many years past holding the important position of president of the Board of Sinking Fund Trustees of Cincinnati. Another was an ex-judge, highly regarded throughout the State as a jurist, and a member of one of the most successful law firms in the city. The ninth was Herbert Bigelow. It would be impossible to secure a more representative set of men. The result was that, although there were over forty candidates in the field, these nine men with one exception were elected by large pluralities. There could not have been a more just or more practical method for selecting these delegates. Every legitimate interest in the community was represented. The experience of Hamilton County was the experience of the entire State. Mr. Ryan's description is not accurate.

The delegates certainly were representative. Was the vote on the amendments also representative? It is not an answer to this question to say that only a certain percentage of the electors voted. There are many reasons familiar to any student of politics for a small vote on questions of this nature. The question is, Did those who voted vote as the mass would have voted? Was the relation between those who voted for and those who voted against certain amendments expressive of the general division of opinion thereon? In short, did the result express the wishes of a majority of the people of Ohio?

The general tone of the convention and of the amendments submitted was undeniably progressive and radical. If these amendments voiced the will of the people of Ohio, then the people of Ohio are progressive and radical. Any question as to the accuracy of this description is easily answered by a survey of contemporary political events. In the spring primaries, where the lines were drawn between Conservative and Radical in both the leading political parties, Mr. Taft, a native son, but supposedly a reactionary, was overwhelmingly defeated by Roosevelt throughout the entire State; and Mr. Wilson as a Progressive on the Democratic side, although he did not enter the State once during the primary campaign, took eighteen national delegates from Judson Harmon, another native son, and a man who had made an excellent record as Governor. Since the election on the constitutional amendments James Cox, at the regular election, running unqualifiedly as a progressive and insisting on the enactment of all legislation necessary to put the constitutional amend-

ments into effect, was elected by the largest plurality ever given a Democratic Governor in the State of Ohio. An impartial survey of the events of the last twelve months in Ohio can leave no doubt as to the sentiment of the people of this State; they are unmistakably and determinedly progressive.

In a general way the result was expressive of the will of the majority. Was it also correctly registered on the particular amendments? Eight of the amendments failed of passage by margins ranging from 1,079 to 87,455. These amendments cannot be in any way classified, nor can any reason be given for their failure to pass except that the voters so willed it. Those failing of adoption included the abolition of capital punishment; one dealing with contempt proceedings and injunctions; woman's suffrage; one designated to eliminate a useless race distinction by striking out the word "white"; and one providing for a fifty-million bond issue for roads. Those amendments which carried had margins which varied from 4,669 to 220,584. Among those receiving large majorities were: one taking off the limit for damages in case of wrongful death, 160,387; one providing for investigations by the General Assembly, 173,442; one providing for the welfare of employees, 163,860; registering and warranting of land titles, 174,566; primary elections, 166,689; double liability of bank stockholders, 220,584; State-wide civil service, 102,187. An analysis of this vote, a survey of those amendments which carried and those which did not, and an examination of the widely different pluralities which the various amendments received show deliberate thought and accurate discrimination.

On a trip through the State during the week preceding the election I had an opportunity to question hundreds of voters from all sections of the State. I was surprised at the interest they were taking and the fullness of their information on particular amendments. My thorough questioning at that time led me to an opinion which the results have strengthened, that the voters were to a remarkable degree exercising a sober judgment after thorough investigation and discussion. I believe that the voters of this State on September 3d last got exactly what they wanted.

It is evident from a thorough investigation of the personnel of the convention and of the votes on the various amendments that they were both representative of the citizens of Ohio. Whatever may be said as to the merits of the amendments finally adopted, there can be no question but that the discriminating will of the majority prevailed. With that fact established, under our present system of government all cavil and complaint should cease. The only course of action aside from acquiescence should be an attempt to change the will of the majority.

Which brings us to a brief discussion of the merits of the amendments themselves. Mr. Ryan says that "the amendments submitted ranged in merit from the unnecessary and harmless to the vicious and revolutionary." Within that range there would seem to be no room for anything practical or beneficial.

Many amendments were submitted to the convention—a total of three hundred and fifty in all. Out of this hopper came forty-two propositions for submission to the voters. Of these one provided as to when the amendments should take effect, another provided a new method of amend-

ing the constitution, another provided for eliminating the word "white" where Amendment Fifteen to the Constitution of the United States had already rendered it nugatory, another provided for suits against the State, and another abolished the Board of Public Works. Besides these there were amendments which were calculated to meet former specific judicial objections on the ground of unconstitutionality, such as the one guaranteeing land titles, the one permitting the use of voting-machines, and the one providing for the organization of boards of education. There was also a group of amendments known as "the labor amendments," which provided for abolishing prison contract labor, for a compulsory Workmen's Compensation Act, for an eight-hour day on public works, for the elimination of the injunction in labor disputes, and for a minimum wage. Another group had to do with changes in courts and court procedure—changing jurisdiction, creating new courts, and introducing the three-fourths jury rule. In addition, there were amendments standing alone which aimed to provide for State-wide civil service, a State liquor license, direct primaries for all elective offices, woman's suffrage, a fifty-million-dollar bond issue for roads, abolition of capital punishment, municipal home-rule, inheritance, income and franchise taxes, and the initiative and referendum. The mere recital of these proposals shows their scope and importance. Among the total of forty-two there were, undoubtedly, some of small merit and relative triviality. On the whole, however, the proposals covered thoroughly the burning questions of the day in Ohio.

The initiative and referendum proposal, which Mr. Ryan referred to as distinctly Socialistic and as "more radical and misrepresentative in its operation than the similar measure in any other State in the Union," was not as radical as its advocates desired and was the result of a compromise. It does not provide for the direct initiative. Under its provisions a measure can only get before the people by being presented first to the legislature by petition signed by three per cent. of the electors of the State distributed over half of the counties of the State. If the legislature takes no action on this law, then by filing a petition of an additional three per cent. of the electors the measure can be placed upon the ballot at the next regular election. No special election under this amendment can be held, thus avoiding one of the stock arguments against the initiative and referendum. The provision that the names on the petition must be distributed throughout half the counties in the State prevents a purely local measure from coming up for the vote of the entire electorate. There are adequate safeguards for guaranteeing the genuineness of signatures and means set forth for acquainting the voters with the proposal to be voted upon.

The referendum part of the amendment provides for a referendum upon the petition of six per cent. of the voters, distributed over half the counties in the State, within ninety days after the adjournment of the legislature. When the writer makes such statements as "Its advocates were unwilling to leave any power to the General Assembly," "They did not propose to take any chances on public sentiment changing," "The principle of legislation by the crowd is thus securely sealed," and "Ohio has distinguished herself by making this percentage the smallest yet adopted by any State," it is evident that he is speaking through a mist

of prejudice so thick that it is impossible to tell whether the voice comes from ignorance or a wilful desire to pervert the facts.

In paying his respects to the amendment dealing with welfare of employees, the writer says that "as a specimen of vicious and discriminating organic law this has no parallel in the constitutions of civilized States." If these words mean anything, and if I am able to decipher their meaning, I would refer Mr. Ryan to the last clause of Article V. of the Constitution of the United States.

It has seemed to me that the things which I have said in this letter should be said and said to your readers in justice to the people of Ohio. We have not been captured either by pirates or fanatics, but are learning, as the citizens of other States are learning, that our forebears did not perform a vicarious act of legislation for all generations to come when they framed our organic law sixty years ago.

I am, sir,

CHARLES SAWYER.

To the Editor of the North American Review:

SIR,—I have read with care Mr. Sawyer's communication criticizing my article on "Socialism in the Ohio Constitution," and I do not see any reason to modify any statement or conclusion contained therein. I am compelled, however, to dissent strongly to the arguments set forth in his reply.

Briefly stated, he controverts my arguments that both the Constitutional Convention and the adoption of the amendments were misrepresentative of the real wishes of the majority of the people of Ohio; he contends that the results of the elections for constitutional delegates and on the amendments were expressive of the sentiments of the Ohio electorate. He rests his demonstration on this—that the conservative element of the State desired both the Constitutional Convention and the amendments offered, because the Ohio State Board of Commerce was an ardent advocate of a revision of the Constitution. "To be sure," he says, "their particular hobby was taxation." He also argues that the high character of the Hamilton County delegation in the convention is evidence that the general electorate desired a constitutional revision. He further argues that because Governor-elect James M. Cox aggressively advocated all the amendments, especially the initiative and referendum, and was elected by an overwhelming plurality, that this was evidence that the sentiment of Ohio favored direct legislation.

The conclusions and statements set forth in the balance of his communication are largely due to a failure to carefully read my article.

I repeat that the criticisms of Mr. Sawyer do not answer my conclusions that the actively organized forces in the election of the Constitutional Convention and the adoption of the radical amendments were "labor leaders, Socialists, single-taxers, and other reformers," including in the last class those whose hobby was taxation. Indeed, the controlling factors back of both elections were those with hobbies.

As to his argument that because Governor-elect Cox received such a pronounced plurality it is to be inferred that his election represents an approval of the initiative and referendum and other radical amendments, an examination of the facts will lead to a different conclusion. Governor Cox's election was due primarily to the utter demoralization and division of the Republican party in Ohio. Another important factor was his

brilliant and courageous canvass in which he outlined his policies, which by their affirmative and philanthropic nature won the commendation of a great many voters. Another powerful vote-making element in his canvass was his positive support of the license of the liquor traffic. His advocacy of the radical amendments had but little material effect on his election; and the vote for Mr. Cox cannot by any sort of reasoning be taken as an approval of the initiative and referendum. Many of the counties—to be accurate, thirty-six of the sixty-nine—which he carried gave pronounced majorities against the initiative and referendum. These thirty-six counties gave Mr. Cox a plurality of 47,532; at the election two months before they gave a majority of 41,341 against the initiative and referendum. What justifies the conclusion that Mr. Cox's plurality was due to his advocacy of the initiative and referendum? On the contrary, a strong disapproval of the amendments in more than half of the counties carried by the Governor-elect makes it very evident that the conclusion of Mr. Sawyer is fallacious.

By the adoption of the two radical amendments discussed in my article—the initiative and referendum, and the welfare of employees—are changed the very fundamentals of our State government. They destroy the representative character of the General Assembly and sweep away the protective guarantees for personal and property rights in Ohio. Mr. Sawyer himself recognizes that the only protection left against an unreasonable operation of the last-mentioned amendment is the Federal Constitution. Why or wherefore the vast majority of the people of Ohio permitted this to be done is not worthy of discussion now. But it is the merest absurdity to contend that it is the action of the electorate of this State when only half as many of the electors voted at the constitutional election as did at the State election in November. It was emphatically a triumph of the minority by which 346,373 out of 1,200,000 voters fastened direct legislation on the majority and swept away the constitutional guarantees, in certain cases, of every man, woman, and child in Ohio. When we consider that the population of Ohio is nearly five million, this change in our fundamental law to affect every one of them is brought about by less than one-fourteenth of the inhabitants.

More than ever I am of the opinion that these radical amendments are misrepresentative of the aggregate public sentiment in Ohio and was not desired by our people. The occurrence of daily events shows the folly and danger of the step taken. Petitions for initiative laws are already filed with the Secretary of State to be acted upon by the General Assembly. Many of the thousands of names were secured by employed agents at five cents per name. Every student of the popular mind knows with what facility names can be secured to petitions. Their unreasonableness, injustice, and absurdity seem to be no bar to their success. One of the initiative bills to be presented to the legislature provides practically for the suppression of a free press and State censorship of newspapers. It grows out of the supposed grievance of some people against certain editors. Yet these petitions receive thousands of signatures. The law, if passed by the General Assembly, would be as tyrannical a piece of legislation as any decree issued by Napoleon against the newspapers of France during the First Consulate.

I am, sir,

DANIEL J. RYAN.